



MASSACHUSETTS DEPARTMENT OF REVENUE  
ROOM OCCUPANCY EXCISE  
COMPLIMENTARY ROOMS

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**ISSUE:**

Under certain circumstances, further delineated in the examples given below, a hotel, motel or lodging house [hotel] may permit some of its rooms to be occupied on a complimentary basis.

Are rooms provided on a complimentary basis by a hotel subject to the room occupancy excise?

**DISCUSSION:** Under G.L. c. 64G, § 3, a rooms excise must be paid whenever:

- (1) the operator of a hotel, motel or lodging house
- (2) transfers a room or rooms to an occupant
- (3) for a "rent" \$15.00 or greater. "Rent" is defined as: "the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever." G.L. c. 64G, § 1(h).

Thus, the room occupancy excise must be collected by any operator of a hotel, motel or lodging house whenever he or she receives sufficient consideration in any form for the right to occupy a complimentary room.

**EXAMPLES:** The following examples illustrate this principle:

**I. TRAVEL AGENTS, TOUR GUIDES, ETC.**

**EXAMPLE 1:** A hotel furnishes a complimentary room to a travel agent. The complimentary room serves as a sales promotion or advertisement. The hotel would ordinarily have to pay for this advertising; the avoidance of this cost is consideration to the hotel, and the excise is imposed.

**EXAMPLE 2:** A hotel furnishes a complimentary room to the tour guide traveling with a group booked at the hotel. The only benefit realized by the hotel is the rent received from the paying group members. No excise is imposed.

**II. GUESTS**

**EXAMPLE 3:** The organizers of a convention rent twenty-five rooms and are given an additional complimentary room. The only benefit realized by the hotel is the rentals received from the paying group members. No additional excise is imposed.

**EXAMPLE 4:** A hotel gives a complimentary room for a night for each twenty nights stayed as part of a "frequent traveler" program. The hotel receives no rent beyond that already paid for occupancy during the first twenty nights. There is no additional excise imposed.

**EXAMPLE 5:** A guest complains that accommodations at a hotel are unsatisfactory and is not charged for the night's stay. The hotel receives nothing from the guest; no excise is imposed.

### III. EMPLOYEES

**EXAMPLE 6:** Hotel A permits employees of an affiliated corporation to stay free of charge at its facilities on a "space available" basis while they are on business for the affiliate; employees of Hotel A while on business may fly free of charge on an airline owned by the affiliate. Since Hotel A will avoid incurring costs it would ordinarily incur for employee travel, complimentary lodgings at Hotel A are given in consideration of services from the affiliate; the excise is imposed.

**EXAMPLE 7:** Hotel A permits employees of an affiliated corporation to stay free of charge at its facilities on a "space available" basis while they are on vacation or for other leisure activities; employees of Hotel A may stay free at hotel facilities of the affiliate on the same basis. Because Hotel A would otherwise incur costs to provide the benefit, avoidance of these costs is consideration for provision of the complimentary lodgings. The excise is imposed.

**EXAMPLE 8:** A hotel permits its employees to use a room free of charge on a "space available" basis. This fringe benefit is additional compensation given in consideration, of the employee's services. Since the hotel receives consideration, the excise is imposed. Avoidance of these costs is consideration to the hotel, and the excise is imposed. In this circumstance the employee is not the agent of the hotel because he is not actively engaged in furthering the hotel's business interests.

**EXAMPLE 9:** An employee of a hotel must remain overnight there because of his duties and is provided with a room. The employee receives a room for the convenience of the employer and the employer is making use of its own facilities through its agent, the employee. In this situation, the employee and the operator of the hotel form a single unit for purposes of the rooms tax, and the hotel is both the "operator" and the "occupant" of the room. There is no transfer of occupancy. Accordingly, the rooms excise does not apply.

### IV. CONSTRUCTION WORKERS

**EXAMPLE 10:** A hotel provides free rooms to a construction crew renovating the hotel. The cost of this lodging would ordinarily be borne by the contractor and passed on to the hotel in the form of a higher price for renovations. The lower price paid by the hotel to the contractor reflects the consideration received for the complimentary rooms. The excise is therefore imposed.

**EXAMPLE 11:** A partially completed hotel project lodges construction workers free of charge in useable parts of the building under construction. Although consideration may be present in the form of a lower construction cost, the building is not yet a hotel, motel or lodging house, registered or required to be registered. Consequently, the rooms excise does not apply.

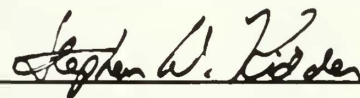
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**DIRECTIVE:** In the situations outlined above, the rooms excise is collected if: (1) the place in which the complimentary room is located is a hotel, motel or lodging house; (2) there is a transfer of occupancy; and (3) there is consideration for the transfer valued at \$15.00 or more. All three of the elements listed above must be present before a complimentary room may be taxed. The excise is based on the fair market value of the room received.

**REFERENCE:** G.L. c. 64G, §§ 1(h), 3.

March 23, 1988



Stephen W. Kidder  
Commissioner of Revenue

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.